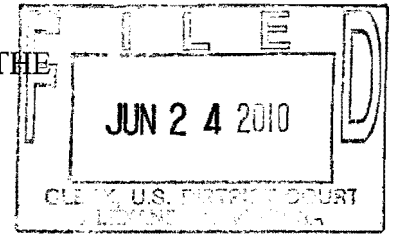


# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division



IN THE MATTER OF THE SEARCH OF	)	Crim. No.: 1:10SW 320
INFORMATION ASSOCIATED WITH	)	
MEGAUPLOAD.COM THAT IS STORED	)	<u>UNDER SEAL</u>
AT THE PREMISES CONTROLLED BY	)	
CARPATHIA HOSTING	)	

**APPLICATION AND AFFIDAVIT FOR A SEARCH WARRANT**

I, William Engel, being duly sworn, hereby depose and state as follows:

**I. INTRODUCTION**

1. I make this affidavit in support of an application for a search warrant for information associated with certain accounts that is stored at premises owned, maintained, controlled, or operated by Carpathia Hosting (Carpathia), a web hosting company headquartered at 43480 Yukon Drive, Suite 200, Ashburn, Virginia 20147. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Carpathia to disclose to the government records, including content, and other information in its possession, pertaining to the computer files identified in Attachment A.

2. I am a Special Agent (SA) with United States Immigration and Customs Enforcement (ICE) within the Department of Homeland Security, formerly, the United States Customs Service. I am currently assigned to the National Intellectual Property Rights Coordination Center in Arlington, Virginia, where my duties include the investigation of crimes involving the infringement of intellectual property, including violations of Title 18, United States Code, Section 2319 and Title 17, United States Code, Section 506. I have been employed as a

Special Agent by ICE for seven years since the establishment of ICE on March 1, 2003. I was previously employed as a Special Agent with the United States Customs Service for approximately one year prior to the inception of ICE. I attended and graduated from the Criminal Investigator Training Program and Customs Basic Enforcement Program at the Federal Law Enforcement Training Center in Glynco, Georgia. Prior to my present employment, I was an Inspector for the Bureau of Alcohol, Tobacco and Firearms (ATF) in Milwaukee, Wisconsin. Previous to my employment with the ATF, I was an Investigator Specialist for the City of Chicago Inspector General's Office for three years. I have directed and been involved in numerous investigations involving the use of computers and the Internet to commit violations of fraud, intrusion and intellectual property laws and have received training in this area as well. I have received training and gained experience in interviewing and interrogation techniques, arrest procedures, search warrant applications, the execution of searches and seizures, intellectual property crimes, computer-based crimes, computer evidence identification, seizure and processing, and various other criminal laws and procedures. I have personally participated in the execution of search warrants involving the search and seizure of computer equipment and Internet-based email accounts.

3. I make this affidavit in connection with an investigation into the activities of Matthew Smith (SMITH), Justin DeDemko (DEDEMKO), Hana Beshara (BESHARA), Joshua Evans (EVANS) and others who are believed to operate a web site known as [www.Ninjavideo.net](http://www.Ninjavideo.net), (the NinjaVideo site) which is being used to reproduce and distribute infringing copies of copyrighted television programs, software and movies, some of which are still in theaters. As provided below, there is probable cause to believe that SMITH, DEDEMKO, BESHARA, and EVANS conspired together and with others, in violation of Title 18, United States Code, Section 371, to reproduce and distribute copyrighted audiovisual works, in violation

of federal criminal copyright laws, namely Title 18, United States Code, Section 2319 and Title 17, United States Code, Section 506 (Criminal copyright infringement) and that they aided and abetted criminal copyright infringement, in violation of Title 18, United States Code, Section 2. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses.

4. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

## **II. EXPLANATION OF TECHNICAL TERMS USED BELOW**

5. Through the course of the ICE investigation, your affiant has learned that Carpathia operates an Internet hosting business which leases computer servers, data storage and Internet connectivity to paying customers. One of its service offerings is that of self-managed, dedicated servers, by which the customer remotely controls and administers servers located in Carpathia's data center facilities. A dedicated server is a computer server that is used only by a single customer. Based upon my training and experience, I am familiar with the following terms:

a. The Internet: The Internet is a collection of computers and computer networks, which are connected to one another via high-speed data links and telephone lines for the purpose of sharing information. A network is a series of devices, including computers and telecommunication devices, connected by communication channels.

b. Internet Protocol Address: An Internet Protocol address (IP address) is a unique numeric address used by computers on the Internet. An IP Address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. An IP address acts much like a home or business street address -- it enables computers connected to the

Internet to properly route traffic to each other. The assignment of IP addresses to computers connected to the Internet is controlled by ISPs.

c. Internet Service Provider (“ISP”): An Internet Service Provider (“ISP”) is a service that provides Internet connectivity to its subscribers. In addition to providing access to the Internet via telephone or other telecommunication lines, ISPs may also provide Internet email accounts and other services unique to each particular ISP such as data and file storage, video streaming, and web site hosting. ISPs maintain records pertaining to the individuals or companies that have subscriber accounts with it. Those records may include identifying and billing information, account access information in the form of log files, electronic mail (“e-mail”) transaction information, account application information, customer service information and other information both in electronic format and in written record format.

d. Internet Hosting Service: An Internet Hosting Service is an ISP that houses or operates computer servers that are connected to the Internet, allowing organizations and individuals to serve content on the Internet or store data at the hosting service. There are various levels and various kinds of services offered. The most generic and powerful kind of Internet hosting provides a server where the client can run anything it wants, including web servers and other servers, and an Internet connection with good upstream bandwidth. Full-featured hosting services include: dedicated hosting service, where the hosting service owns and manages the machine; virtual private server, which appears as a dedicated server to the outside world but only uses a single physical server operated by the host; and collocation facilities, which provide just the Internet connection and climate control, but let the client do his own system administration.

e. URL address: A Uniform Resource Locator (“URL”) address is a series of characters (e.g., letters, numbers, or other characters) that correspond with a particular IP address

and a specific “page” of information located at that address. For example, the URL for the main page at CNN’s website is [www.cnn.com](http://www.cnn.com), and that URL – along with URLs for different web pages at the same website (e.g., [www.cnn.com/story1](http://www.cnn.com/story1), [www.cnn.com/story2](http://www.cnn.com/story2)) – correspond with specific IP addresses.

### III. RELEVANT STATUTES

#### *Criminal Copyright Infringement*

6. Title 17, United States Code, Sections 506(a), (b) provides, in pertinent part:

**(a) Criminal Infringement**—(1) In general—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

(A) for purposes of commercial advantage or private financial gain;

(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000; or

(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

**(b) Forfeiture and Destruction** — When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.

#### *Penalties For Criminal Copyright Infringement*

7. The penalties for violations of Title 17, United States Code, Sections 506, are set forth in Title 18, United States Code, Sections 2319(b), (c), (d), which provide in pertinent part:

(b) Any person who commits an offense under section 506(a)(1)(A) of title 17

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least 10

copies or phonorecords, of 1 or more copyrighted works, which have a total retail value of more than \$2,500 ...

(c) Any person who commits an offense under section 506(a)(1)(B) of title 17, United States Code –

(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of \$2,500 or more;

...

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000.

(d) Any person who commits an offense under section 506(a)(1)(C) of title 17, United States Code –

(1) shall be imprisoned not more than 3 years, fined under this title, or both;

(2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain ...

#### **IV. SUMMARY OF INVESTIGATION AND PROBABLE CAUSE**

8. In the summer of 2009, your affiant, acting on a referral from the Motion Picture Association of America (MPAA), initiated an investigation of the NinjaVideo site, which was believed to be reproducing and distributing over the Internet unauthorized copies of MPAA member motion picture studios' copyrighted works. MPAA representatives advised that none of its member studios authorizes its movies for distribution through the NinjaVideo site.

#### **THE NINJAVIDEO SITE**

9. Initial investigation of the NinjaVideo site revealed a publicly accessible web site that allowed visitors to watch and download popular, television shows and movies, many of which were recognized as still playing in cinemas. Throughout the ICE investigation, your affiant has observed links to more than 200 different movies and more than 300 different



television programs on the NinjaVideo site. These links are typically updated as new movies are released in cinemas and as new television programs are broadcast. In addition to distributing copyrighted content, the NinjaVideo site displays commercial advertisements, which sometimes fill the entire browser window, on various portions of the web site.

10. Many of the movies listed on the NinjaVideo site bear the indicia of the Internet copyright piracy scene, known as the “warez” scene. For example, some movies contain the term “CAM” in the file name, which indicates that the movie was recorded with a video camera while it was playing in a theater. Other movies contain the term “SCR” in the file name, which is a term commonly used in the warez scene to identify “screener” copies of movies that are typically delivered by the studio to movie critics for review. In addition, most movies contain the name of the organized Internet piracy group that was responsible for obtaining the unauthorized copy and releasing it onto the Internet. For example, a link to the movie “Iron Man 2” on NinjaVideo was listed as “Iron Man 2 (2010) CAM XViD - TDV Release (DivX Mirror).avi”. This file name indicates that a group known as “TDV” was responsible for initially distributing onto the Internet a “cammed” copy of the movie Iron Man 2 in XViD format.

11. Using an undercover computer to visit the NinjaVideo site, ICE agents have observed and engaged in the process of viewing and downloading content distributed by the site. Your affiant has also watched and downloaded several movies that were still playing in cinemas. Many of the movies and television shows are in a format known as DivX. To play the DivX formatted content, a user first needs to install the free, publicly available DivX software and web browser plug-in. The user only needs to install this plug-in once on the web browser being used. The visitor then must open a small computer program called an “applet” on the NinjaVideo site known as the “NinjaVideo Helper.” Once the applet is opened and running in the visitor’s browser window, the visitor may click on any movie or television title. The purpose of the applet



appears to be to prevent other web sites from adopting and playing content hosted by the NinjaVideo site's members and operators (a process known as leeching) which could potentially take advertising revenue away from the NinjaVideo site. Other movies are in Xvid format, and may be downloaded directly by users without being watched in the browser window.

12. Once a visitor to the NinjaVideo site opens the NinjaVideo Helper applet, he/she is able to watch movies and television shows within the web browser. When the user clicks on the movie title, an advertisement is typically displayed, after which the movie begins playing in the browser. At the end of a movie, the user can save the entire movie to a computer storage device. This is a process that ICE agents have performed on multiple occasions, including those set forth below:

Date	Movie Title	U.S. Theater Release	DVD Date	URL	Type
12/16/2009	Ninja Assassin	11/25/2009	03/16/2010	<a href="http://www.ninjavideo.net/video/49303">http://www.ninjavideo.net/video/49303</a>	AVI
12/17/2009	Astro Boy	10/23/2009	03/16/2010	<a href="http://www.ninjavideo.net/video/46128">http://www.ninjavideo.net/video/46128</a>	AVI
12/18/2009	Transformers 2 Revenge of the Fallen	06/24/2009	11/30/2009	<a href="http://www.ninjavideo.net/video/28806">http://www.ninjavideo.net/video/28806</a>	AVI
12/18/2009	Four Christmases	11/26/2008	11/24/2009	<a href="http://www.ninjavideo.net/video/46153">http://www.ninjavideo.net/video/46153</a>	AVI
12/30/2009	Alvin and the Chipmunks 2	12/23/2009	03/30/2010	<a href="http://www.ninjavideo.net/video/54062">http://www.ninjavideo.net/video/54062</a>	AVI
12/30/2009	Invictus (Pt 1)	12/11/2009	05/18/2010	<a href="http://www.ninjavideo.net/video/53751">http://www.ninjavideo.net/video/53751</a>	AVI
12/30/2009	Invictus (Pt 2)	12/11/2009	05/18/2010	<a href="http://www.ninjavideo.net/video/53753">http://www.ninjavideo.net/video/53753</a>	AVI
12/30/2009	Sherlock Holmes	12/25/2009	03/30/2010	<a href="http://www.ninjavideo.net/video/54040">http://www.ninjavideo.net/video/54040</a>	AVI
01/04/2010	Avatar (Pt 1)	12/18/2009	04/22/2010	<a href="http://www.ninjavideo.net/video/52811">http://www.ninjavideo.net/video/52811</a>	DivX
01/04/2010	Avatar (Pt 2)	12/18/2009	04/22/2010	<a href="http://www.ninjavideo.net/video/52812">http://www.ninjavideo.net/video/52812</a>	DivX
01/06/2010	Up In The Air	11/13/2009	03/09/2010	<a href="http://www.ninjavideo.net/video/54192">http://www.ninjavideo.net/video/54192</a>	AVI
01/12/2010	Youth In Revolt	01/08/2010	06/15/2010	<a href="http://www.ninjavideo.net/video/54785">http://www.ninjavideo.net/video/54785</a>	AVI
01/12/2010	Daybreakers	01/08/2010	05/11/2010	<a href="http://www.ninjavideo.net/video/54844">http://www.ninjavideo.net/video/54844</a>	DivX
01/12/2010	The Hangover	06/05/2009	12/15/2009	<a href="http://www.ninjavideo.net/video/27282">http://www.ninjavideo.net/video/27282</a>	DivX
01/13/2010	Couples Retreat (Pt 1)	10/09/2009	02/09/2010	<a href="http://www.ninjavideo.net/video/53822">http://www.ninjavideo.net/video/53822</a>	AVI
01/13/2010	Couples Retreat (Pt 2)	10/09/2009	02/09/2010	<a href="http://www.ninjavideo.net/video/53823">http://www.ninjavideo.net/video/53823</a>	AVI
01/14/2010	Fantastic Mr Fox	11/13/2009	03/23/2010	<a href="http://www.ninjavideo.net/video/52518">http://www.ninjavideo.net/video/52518</a>	DivX
01/14/2010	Brothers	12/04/2009	03/23/2010	<a href="http://www.ninjavideo.net/video/54066">http://www.ninjavideo.net/video/54066</a>	AVI
01/14/2010	The Stepfather	10/16/2009	02/09/2010	<a href="http://www.ninjavideo.net/video/49062">http://www.ninjavideo.net/video/49062</a>	AVI
01/14/2010	It's Complicated (Pt 1)	12/23/2009	04/27/2010	<a href="http://www.ninjavideo.net/video/54635">http://www.ninjavideo.net/video/54635</a>	DivX
01/14/2010	It's Complicated (Pt 2)	12/23/2009	04/27/2010	<a href="http://www.ninjavideo.net/video/54636">http://www.ninjavideo.net/video/54636</a>	DivX

Date	Movie Title	U.S. Theater Release	DVD Date	URL	Type
01/20/2010	The Princess and the Frog	12/11/2009	03/16/2010	<a href="http://www.ninjavideo.net/video/52411">http://www.ninjavideo.net/video/52411</a>	DivX
01/20/2010	Sherlock Holmes (Pt 1)	12/25/2009	03/30/2010	<a href="http://www.ninjavideo.net/video/54039">http://www.ninjavideo.net/video/54039</a>	DivX
01/20/2010	Sherlock Holmes (Pt 2)	12/25/2009	03/30/2010	<a href="http://www.ninjavideo.net/video/54040">http://www.ninjavideo.net/video/54040</a>	DivX
01/21/2010	The Lovely Bones (Pt 1)	12/11/2009	02/09/2010	<a href="http://www.ninjavideo.net/video/54146">http://www.ninjavideo.net/video/54146</a>	DivX
01/21/2010	The Lovely Bones (Pt 2)	12/11/2009	02/09/2010	<a href="http://www.ninjavideo.net/video/54147">http://www.ninjavideo.net/video/54147</a>	DivX
01/21/2010	2012 (Pt 1)	11/13/2009	03/02/2010	<a href="http://www.ninjavideo.net/video/48061">http://www.ninjavideo.net/video/48061</a>	DivX
01/21/2010	2012 (Pt 2)	11/13/2009	03/02/2010	<a href="http://www.ninjavideo.net/video/48062">http://www.ninjavideo.net/video/48062</a>	DivX
01/22/2010	The Men Who Stare at Goats (Pt 1)	11/06/2009	03/23/2010	<a href="http://www.ninjavideo.net/video/55014">http://www.ninjavideo.net/video/55014</a>	AVI
01/22/2010	The Men Who Stare at Goats (Pt 2)	11/06/2009	03/23/2010	<a href="http://www.ninjavideo.net/video/55015">http://www.ninjavideo.net/video/55015</a>	AVI
01/27/2010	Legion	01/22/2010	05/11/2010	<a href="http://www.ninjavideo.net/video/55903">http://www.ninjavideo.net/video/55903</a>	AVI
01/27/2010	The Book of Eli	01/15/2010	06/15/2010	<a href="http://www.ninjavideo.net/video/55773">http://www.ninjavideo.net/video/55773</a>	DivX
02/26/2010	Shutter Island	02/19/2010	06/08/2010	<a href="http://www.ninjavideo.net/video/58564">http://www.ninjavideo.net/video/58564</a>	AVI
02/26/2010	Valentines Day	02/12/2010	05/18/2010	<a href="http://www.ninjavideo.net/video/58206">http://www.ninjavideo.net/video/58206</a>	AVI
02/26/2010	Valentines Day	02/12/2010	05/18/2010	<a href="http://www.ninjavideo.net/video/58204">http://www.ninjavideo.net/video/58204</a>	DivX
02/26/2010	The Wolfman	02/12/2010	06/01/2010	<a href="http://www.ninjavideo.net/video/58268">http://www.ninjavideo.net/video/58268</a>	AVI
02/26/2010	The Wolfman	02/12/2010	06/01/2010	<a href="http://www.ninjavideo.net/video/58267">http://www.ninjavideo.net/video/58267</a>	DivX
03/08/2010	Alice in Wonderland (Pt 1)	03/05/2010	06/01/2010	<a href="http://www.ninjavideo.net/video/59615">http://www.ninjavideo.net/video/59615</a>	AVI
03/08/2010	Alice in Wonderland (Pt 2)	03/05/2010	06/01/2010	<a href="http://www.ninjavideo.net/video/59616">http://www.ninjavideo.net/video/59616</a>	AVI
03/31/2010	How to Train Your Dragon	03/26/2010	Future	<a href="http://www.ninjavideo.net/video/61893">http://www.ninjavideo.net/video/61893</a>	AVI
03/31/2010	How to Train Your Dragon	03/26/2010	Future	<a href="http://www.ninjavideo.net/video/61892">http://www.ninjavideo.net/video/61892</a>	DivX
03/31/2010	The Bounty Hunter	03/19/2010	Future	<a href="http://www.ninjavideo.net/video/61094">http://www.ninjavideo.net/video/61094</a>	AVI
03/31/2010	The Bounty Hunter	03/19/2010	Future	<a href="http://www.ninjavideo.net/video/61095">http://www.ninjavideo.net/video/61095</a>	AVI
03/31/2010	Green Zone	03/12/2010	Future	<a href="http://www.ninjavideo.net/video/60165">http://www.ninjavideo.net/video/60165</a>	AVI
03/31/2010	Green Zone (Pt 1)	03/12/2010	Future	<a href="http://www.ninjavideo.net/video/60164">http://www.ninjavideo.net/video/60164</a>	DivX
03/31/2010	Green Zone (Pt 2)	03/12/2010	Future	<a href="http://www.ninjavideo.net/video/60758">http://www.ninjavideo.net/video/60758</a>	DivX
03/31/2010	She's Out of My League (Pt 1)	03/12/2010	Future	<a href="http://www.ninjavideo.net/video/60873">http://www.ninjavideo.net/video/60873</a>	DivX
03/31/2010	She's Out of My League (Pt 2)	03/12/2010	Future	<a href="http://www.ninjavideo.net/video/60874">http://www.ninjavideo.net/video/60874</a>	DivX
03/31/2010	Repo Men	03/19/2010	Future	<a href="http://www.ninjavideo.net/video/61091">http://www.ninjavideo.net/video/61091</a>	DivX
03/31/2010	Repo Men	03/19/2010	Future	<a href="http://www.ninjavideo.net/video/61093">http://www.ninjavideo.net/video/61093</a>	DivX
04/30/2010	The Back-Up Plan	04/23/2010	Future	<a href="http://www.ninjavideo.net/video/64459">http://www.ninjavideo.net/video/64459</a>	DivX
04/30/2010	The Back-Up Plan	04/23/2010	Future	<a href="http://www.ninjavideo.net/video/64460">http://www.ninjavideo.net/video/64460</a>	AVI
05/04/2010	Iron Man 2	05/07/2010	Future	<a href="http://www.ninjavideo.net/video/65843">http://www.ninjavideo.net/video/65843</a>	DivX
05/04/2010	Iron Man 2	05/07/2010	Future	<a href="http://www.ninjavideo.net/video/65844">http://www.ninjavideo.net/video/65844</a>	AVI
05/07/2010	A Nightmare on Elm	04/30/2010	Future	<a href="http://www.ninjavideo.net/video/65850">http://www.ninjavideo.net/video/65850</a>	DivX

Date	Movie Title	U.S. Theater Release	DVD Date	URL	Type
	Street				
05/07/2010	A Nightmare on Elm Street	04/30/2010	Future	<a href="http://www.ninjavideo.net/video/65851">http://www.ninjavideo.net/video/65851</a>	AVI
06/11/2010	Shrek Forever After	05/21/2010	Future	<a href="http://www.ninjavideo.net/video/67813">http://www.ninjavideo.net/video/67813</a>	AVI
06/11/2010	Shrek Forever After	05/21/2010	Future	<a href="http://www.ninjavideo.net/video/67778">http://www.ninjavideo.net/video/67778</a>	DivX
06/11/2010	Get Him to the Greek	06/04/2010	Future	<a href="http://www.ninjavideo.net/video/69081">http://www.ninjavideo.net/video/69081</a>	DivX
06/11/2010	Prince of Persia The Sands of Time	05/28/2010	Future	<a href="http://www.ninjavideo.net/video/68003">http://www.ninjavideo.net/video/68003</a>	AVI
06/11/2010	Prince of Persia The Sands of Time	05/28/2010	Future	<a href="http://www.ninjavideo.net/video/68005">http://www.ninjavideo.net/video/68005</a>	AVI
06/11/2010	Prince of Persia The Sands of Time	05/28/2010	Future	<a href="http://www.ninjavideo.net/video/68002">http://www.ninjavideo.net/video/68002</a>	DivX
06/11/2010	Prince of Persia The Sands of Time	05/28/2010	Future	<a href="http://www.ninjavideo.net/video/68004">http://www.ninjavideo.net/video/68004</a>	DivX
06/11/2010	Letters to Juliet	05/14/2010	Future	<a href="http://www.ninjavideo.net/video/68269">http://www.ninjavideo.net/video/68269</a>	AVI
06/11/2010	Letters to Juliet	05/14/2010	Future	<a href="http://www.ninjavideo.net/video/68268">http://www.ninjavideo.net/video/68268</a>	DivX
06/11/2010	Robin Hood	05/14/2010	Future	<a href="http://www.ninjavideo.net/video/67038">http://www.ninjavideo.net/video/67038</a>	DivX
06/11/2010	Robin Hood	05/14/2010	Future	<a href="http://www.ninjavideo.net/video/67040">http://www.ninjavideo.net/video/67040</a>	DivX
06/16/2010	Hot Tub Time Machine	03/26/2010	Future	<a href="http://www.ninjavideo.net/video/69870">http://www.ninjavideo.net/video/69870</a>	AVI
06/16/2010	Hot Tub Time Machine	03/26/2010	Future	<a href="http://www.ninjavideo.net/video/69869">http://www.ninjavideo.net/video/69869</a>	DivX
06/16/2010	The Karate Kid	06/11/2010	Future	<a href="http://www.ninjavideo.net/video/69837">http://www.ninjavideo.net/video/69837</a>	AVI
06/16/2010	The Karate Kid	06/11/2010	Future	<a href="http://www.ninjavideo.net/video/69839">http://www.ninjavideo.net/video/69839</a>	AVI
06/16/2010	The Karate Kid	06/11/2010	Future	<a href="http://www.ninjavideo.net/video/69836">http://www.ninjavideo.net/video/69836</a>	DivX
06/16/2010	The Karate Kid	06/11/2010	Future	<a href="http://www.ninjavideo.net/video/69838">http://www.ninjavideo.net/video/69838</a>	DivX
06/16/2010	Sex and the City 2	05/27/2010	Future	<a href="http://www.ninjavideo.net/video/69329">http://www.ninjavideo.net/video/69329</a>	DivX
06/16/2010	Sex and the City 2	05/27/2010	Future	<a href="http://www.ninjavideo.net/video/69493">http://www.ninjavideo.net/video/69493</a>	DivX
06/16/2010	Splice	06/04/2010	Future	<a href="http://www.ninjavideo.net/video/69533">http://www.ninjavideo.net/video/69533</a>	AVI
06/16/2010	Splice	06/04/2010	Future	<a href="http://www.ninjavideo.net/video/69532">http://www.ninjavideo.net/video/69532</a>	DivX
06/16/2010	The A-Team	06/11/2010	Future	<a href="http://www.ninjavideo.net/video/69404">http://www.ninjavideo.net/video/69404</a>	AVI
06/16/2010	The A-Team	06/11/2010	Future	<a href="http://www.ninjavideo.net/video/69406">http://www.ninjavideo.net/video/69406</a>	AVI
06/16/2010	The A-Team	06/11/2010	Future	<a href="http://www.ninjavideo.net/video/69403">http://www.ninjavideo.net/video/69403</a>	DivX
06/16/2010	The A-Team	06/11/2010	Future	<a href="http://www.ninjavideo.net/video/69405">http://www.ninjavideo.net/video/69405</a>	DivX

### **LOCATION OF INFORMATION ON CARPATHIA COMPUTERS**

13. Using publicly available software that can detect the Internet Protocol addresses of data incoming to the undercover computer, your affiant was able to determine that the movies listed on the table above were being downloaded from computers assigned IP addresses held by three commercial Internet hosting services: Carpathia Hosting, headquartered in Ashburn,

Virginia, which is located in the Eastern District of Virginia; WZ Communications Inc., which is linked to the Netherlands-based host Webazilla, which also operates a datacenter in Dallas, Texas; and, NoZone Inc. in Chicago, Illinois. Each of these Internet hosting service companies leases high-speed computer server space and Internet connectivity to the public.

14. Information provided by Carpathia revealed that the unauthorized copies of movies downloaded from Carpathia's facilities are stored on dedicated computer servers that Carpathia leases to a file and media storage service company known as MegaUpload Ltd., which operates the MegaUpload.com site and business. MegaUpload Ltd., which is headquartered in Hong Kong, allows account holders to upload and store files of various sizes, depending on whether the user has a free or fee-based "premium" account. MegaUpload.com has become a popular service for the storage of infringing copies of copyrighted movies and television shows.

15. Several other movies available to view on-line (but not download) on the site are in Adobe Flash format. The Flash formatted movies do not appear to be hosted by NinjaVideo, but are instead hosted by a web site known as Megavideo.com, which is affiliated with MegaUpload.com and also operated by MegaUpload Ltd. The Megavideo.com hosted movies are "framed" in a user's browser by the NinjaVideo site so that they appear to be playing on the NinjaVideo site.

#### **THE NINJAVIDEO SITE OPERATORS**

16. A search of publicly available domain name registration records revealed that the Ninjavideo.net domain was registered on or about January 22, 2008. The registrant of Ninjavideo.net concealed his name, addresses and contact information from publicly available WHOIS databases through the use of a domain registration privacy service called WhoisGuard, which is operated by NameCheap. Pursuant to legal process, NameCheap provided business records associated with Ninjavideo.net, which identified SMITH as the registrant and account



holder. NameCheap's records identify dead1ne@gmail.com as the email address associated with SMITH's Ninjavideo.net domain name account.

17. A search of publicly available WHOIS records revealed that the NinjaVideo web site is hosted on a computer assigned the IP address 93.174.93.198, which is owned by a Netherlands-based company known as Ecatel Ltd. Ecatel is known as a web hosting company, and its web site contains the statement "High quality Dedicated servers & Co-location services in Amsterdam, Alphen a/d Rijn, The Hague and Stockholm." A review of PayPal's account records for subject SMITH reveal regular payments to Ecatel from January 19, 2008 to May 15, 2010.

18. Observation of the NinjaVideo site by your affiant revealed that the site uses a service offered by Google called "Google Analytics." According to Google's product literature, the Google Analytics service provides web site operators with data on the usage of their web sites, including web site traffic, how visitors to the site navigate within or away from it, and the success of advertisements on the site. Google Analytics customer records for the NinjaVideo site revealed that a Google Analytics account was created for the NinjaVideo site on or about March 2, 2008. The records further revealed three users and their email addresses associated with the Google Analytics account: "Matthew Smith", using the email address dead1ne@gmail.com; "Justin Dedemko", using the email account justin.dedemko@gmail.com; and "Hana Beshara", using the email account phara0hess@gmail.com.

19. In addition to the unauthorized copies of movies and television shows available through the NinjaVideo site, the site has a section known as the forum board, which contains messages from the NinjaVideo site operators and provides a forum for NinjaVideo users to exchange messages with the site's operators and with other users. A post in the forum board dated December 30, 2009 by an Administrator named "Phara" described the roles of different members of the NinjaVideo staff. That post identifies the following user aliases as

“Administrators – Staff”: PHARA, DEAD1NE, AFR1KA, TIK, WADSWERTH, HTRDFRK – Security Admin, STEVEH – Mainsite Admin, RICKYG01 – Mainsite Admin, and CREE8 – Mainsite Admin. The post also identifies staff members who are “Moderators – Staff”, “Gods of the Game – Staff,” “Legends – Staff”, and “Gods of the Up – Staff”. The terms “Up” and “Uploader” refer to the uploading of pirated content onto computer servers that can then be accessed by sites, such as the NinjaVideo site.

20. Evidence collected from a variety of sources during the course of the ICE investigation has revealed that BESHARA uses the aliases “PHARA” and “PHARA0HESS”, SMITH uses the alias “DEAD1NE”, DEDEMKO uses the alias “AFR1KA” and EVANS uses the alias “WADSWERTH”. For example,

a. As described above and below, SMITH frequently uses alias “dead1ne” on various services, including the NameCheap account for the NinjaVideo.net domain, the Google Analytics account for the NinjaVideo site, his PayPal account used for the site and his Gmail account.

b. PayPal records for accounts for DEDEMKO show his use of email addresses justin.dedemko@gmail.com, afr1ka@ymail.com and jstndedemko3@gmail.com.

c. PayPal records for EVANS identify his primary email address as joshev@yahoo.com. Subscriber records provided by Yahoo! for that email account identify wadswarth@gmail.com as a separate email account used by EVANS.

d. PayPal records for BESHARA identify her primary email address as phara@ninjavideo.net. In addition, Google’s Google Analytics PayPal records for the NinjaVideo site identify BESHARA’s Gmail account as phara0hess@gmail.com.

21. On or about February 22, 2010, a United States Magistrate Judge in the Eastern District of Virginia issued a search warrant for information, including message content,

associated with the dead1ne@gmail.com email account, registered to SMITH. Within SMITH's email account was an email from SMITH to what appears to be a tax preparer detailing income and deductions from the operation of the NinjaVideo site from January 1, 2009 to March 31, 2009. Among other expenses, SMITH listed payments of \$20,734.34 to BESHARA and \$9,375.00 to DEDEMKO during that three month period. He also listed income of \$33,439.52 from AdBrite, \$17,706.57 from Widget and \$7,055.88 from PayPal donations. AdBrite and Mpire Corporation (which operated Widget) are advertising networks.

22. Also contained within SMITH's dead1ne@gmail.com email account were emails between subjects SMITH, BESHARA, and DEDEMKO regarding the operation of the NinjaVideo site. For example, on or about May 24, 2008, BESHARA sent an email entitled "final" from the email address hana\_beshara@yahoo.com to DEDEMKO at the email address justin.dedemko@gmail.com and SMITH at dead1ne@gmail.com. Attached to the email was a Microsoft Word document entitled "StageNinjareformat-1" which contained a draft business plan for an Internet video web site.

23. SMITH's email account also contained notices from copyright owners and others that content on the NinjaVideo site infringed copyrights. On May 10, 2008, he received a notice from the NinjaVideo's domain name registrar that it had received a Digital Millennium Copyright Act (DMCA) notice of infringing material on the site. SMITH's email account also contained a copy of a December 4, 2008 letter from Starz Media LLC to NinjaVideo's domain name registrar demanding that the NinjaVideo site cease and desist from continuing to facilitate the download of the movie title "Righteous Kill."

24. Google's records for SMITH's dead1ne@gmail.com account revealed that SMITH created a "Google Apps" account for the NinjaVideo.net domain name on or about September 19, 2008. Google Apps is a Google service that, among other things, allows



subscribers to use a domain name that they own in conjunction with Google's Gmail web-based email service. For example, if a person named "John" owned the domain name "Loremipsum.com", he could subscribe to the Google Apps service and use Google's Gmail service to send and receive email from and to the email account "john@loremipsum.com." Google's records showed that, as of April 12, 2010, 22 of the available sub-Google Apps accounts for NinjaVideo.net had been created. Included among these 22 sub-accounts were email accounts corresponding to names of persons identified as "Staff" in the December 2009 forum post by Phara. AFRIKA@NINJAVIDEO.NET, DEADLINE@NINJAVIDEO.NET, PHARA@NINJAVIDEO.NET, and WADSWERTH@NINJAVIDEO.NET.

25. The aforementioned facts provide evidence of probable cause to believe that the information associated with MegaUpload.com that is stored on computers controlled by Carpathia Hosting contain contraband and/or evidence and/or instrumentalities and/or fruits related to violations of Title 18, United States Code, Sections 2319, Title 17, United States Code, Section 506, and Title 18, United States Code, Section 371.

**V. INFORMATION TO BE SEARCH AND THINGS TO BE SEIZED**

26. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Carpathia to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

**VI. COMPUTER DATA**

27. Based on my training and experience, and the facts as set forth in this affidavit, there is probable cause to believe that on the computer systems in the control of Carpathia

associated with its customer, MegaUpload, there exists evidence of a crime, namely, conspiracy to commit criminal copyright infringement and the aiding and abetting of criminal copyright infringement. Accordingly, a search warrant is requested.

28. This Court has jurisdiction to issue the requested warrant because it is “a court with jurisdiction over the offense under investigation.” 18 U.S.C. § 2703(a).

29. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

30. Carpathia has indicated that in the event it is not able to locate the content identified on Attachment A that is stored on its servers on its own, it will work with its customer, MegaUpload, to access the content to provide in response to the search warrant.

31. The aforementioned facts provide evidence of probable cause to believe that the items described in Attachment B will be found at the PREMISES TO BE SEARCHED described in Attachment A. The records described in Attachment B constitute not only evidence, contraband, fruits, and instrumentalities of these offenses, but also constitute “implements, devices, or equipment used in the distribution of” infringing copies of copyrighted works, and are thereby subject to criminal forfeiture and destruction or other disposition pursuant to section 17 U.S.C. § 506(b).

#### **IX. REQUEST FOR SEALING**

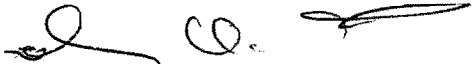
32. Since the investigation is continuing, the Affiant requests that this search warrant affidavit be sealed until such time as the Court directs otherwise. Disclosure of the search warrant affidavit at this time would seriously jeopardize the ongoing investigation, as such disclosure may provide an opportunity to destroy evidence, change patterns of behavior, notify confederates, or allow confederates to flee or continue flight from prosecution. Notwithstanding the above, the government requests that Carpathia and its customer MegaUpload be permitted to

view the warrant and Attachments A and B to the warrant to assist them in executing the warrant.

The investigation in this matter is continuing and it is anticipated that additional search warrants may be executed at other locations in the near future.

  
Special Agent *ENGEL*  
U.S. Immigration & Customs Enforcement

Subscribed and sworn to before me this 24<sup>th</sup> day of June, 2010.

  
HONORABLE IVAN D. DAVIS  
UNITED STATES MAGISTRATE JUDGE